

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	Civil Action No.:
)	
v.)	Filed: [2/15/96]
)	
BROWNING-FERRIS INDUSTRIES OF)	
IOWA, INC.,)	
BROWNING-FERRIS INDUSTRIES OF)	
TENNESSEE, INC., and)	
BROWNING-FERRIS INDUSTRIES,)	
INC.,)	
)	
Defendants.)	
)	

COMPLAINT

(For Violation of Section 2 of the Sherman Act)

The United States of America, acting under the direction of the Attorney General of the United States, brings this civil action to obtain equitable and other relief as is appropriate against the Defendants named herein and complains and alleges as follows:

I.

JURISDICTION AND VENUE

1. This Complaint is filed and this action is instituted by the United States under Section 4 of the Sherman Act, as amended, 15 U.S.C. § 4, in order to prevent and restrain the continuing violation by Defendants, as hereinafter alleged, of Section 2 of the Sherman Act, as amended, 15 U.S.C. § 2. This Court also has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1331 and 1337.

2. Venue is proper in this district under Section 12 of the Clayton Act, 15 U.S.C. § 22, and under 28 U.S.C. § 1391 because Defendant Browning-Ferris Industries, Inc. transacts business and is found within this district and because Defendants Browning-Ferris Industries of Tennessee, Inc. and Browning-Ferris Industries of Iowa, Inc. consent to personal jurisdiction in this proceeding.

II.

DEFINITIONS

3. "Memphis market" means the counties of Shelby, TN; Fayette, TN; Crittenden, AK; DeSoto, MS; Marshall, MS; Tate, MS; and Tunica, MS.

4. "Dubuque market" means the counties of Dubuque and Jackson, IA.

III.

DEFENDANTS

5. Browning-Ferris Industries, Inc. ("BFI") is a corporation organized and existing under the laws of the State of Delaware with its principal offices in Houston, Texas. BFI is engaged in providing solid waste hauling services throughout North America. BFI and its affiliates had total revenues of over \$4 billion in their 1994 fiscal year. BFI is engaged in interstate commerce and in activities substantially affecting interstate commerce.

6. Browning-Ferris Industries of Tennessee, Inc. ("BFIT") is a corporation organized and existing under the laws of the State of Tennessee with its principal offices in Memphis, TN.

BFIT is engaged in providing solid waste hauling services in the States of Tennessee, Arkansas, and Mississippi and had total revenues of over \$40.9 million in its 1994 fiscal year. BFIT is engaged in interstate commerce and in activities substantially affecting interstate commerce.

7. Browning-Ferris Industries of Iowa, Inc. ("BFII") is a corporation organized and existing under the laws of the State of Iowa with its principal offices in Des Moines, Iowa. BFII is engaged in providing solid waste hauling services in the State of Iowa and had total revenues of over \$2.6 million in its 1994 fiscal year. BFII is engaged in interstate commerce and in activities substantially affecting interstate commerce.

IV.

TRADE AND COMMERCE

8. Solid waste hauling involves the collection of paper, food, and other solid waste from residential, commercial and industrial customers, and the transporting of that waste to a landfill or other disposal site. These services may be provided by private haulers directly to residential, commercial and industrial customers, or indirectly through municipal contracts or franchises.

9. Service to commercial customers accounts for a large percentage of total hauling revenues. Commercial customers include restaurants, large apartment complexes, retail and wholesale stores, office buildings and industrial parks. These customers typically generate a substantially larger volume of waste than do residential customers. Waste generated by

commercial customers is usually collected in metal containers of one to ten cubic yards provided by their hauling firm. One to ten cubic yard containers are called "small containers." Small containers are collected primarily by front-end load vehicles that lift the containers over the front of the truck by means of a hydraulic hoist and empty them into the storage section of the vehicle, where the waste is compacted. Service to commercial customers using 1 to 10 cubic yard containers is called "small containerized hauling service."

10. Solid waste hauling firms also provide service to residential and industrial (or "roll-off") customers. Residential customers, typically households and small apartments that generate small amounts of waste, use noncontainerized solid waste hauling service, normally by placing plastic bags or trash cans at curbside. Industrial or roll-off customers include factories and construction sites. These customers either generate non-compactible waste, such as concrete or building debris, or very large quantities of compactible waste. They deposit their waste in very large containers (usually 20-40 cubic yards) that are loaded onto a roll-off truck and are transported individually to the disposal site where they are emptied before being returned to the customer's premises. Some roll-off customers, like shopping malls, use large, roll-off containers with compactors. This type of customer generally generates compactible waste, like cardboard, in very great quantities. It is more economical and convenient for this type of customer to

use roll-off service with a compactor than to have a number of small containers picked up multiple times a week.

V.

THE RELEVANT MARKETS AND DEFENDANTS' MARKET POWER

11. The relevant product market is small containerized hauling service. There are no practical substitutes for small containerized hauling service. Small containerized hauling service customers will not generally switch to noncontainerized service in the event of a price increase, because it is too impractical and costly for them to bag and carry their volume of trash to the curb for hand pick-up. Similarly, roll-off service is much too costly and the container takes up too much space for most small containerized hauling service customers. Only customers that generate the largest volumes of compactible solid waste can economically use roll-off service, and for such customers, roll-off service is usually the only viable option.

12. The relevant geographic markets are the Memphis market and the Dubuque market. Solid waste hauling services are generally provided in very localized areas. Route density (a large number of customers that are close together) is important for small containerized solid waste hauling firms to be profitable. In addition, it is not economically efficient for heavy trash hauling equipment to travel long distances without collecting significant amounts of waste, making it impractical for a hauler to serve major metropolitan areas from a distant base. Haulers, therefore, generally establish garages and related facilities within each major local area served.

13. Defendant BFIT has market power in small containerized service in the Memphis market. BFIT has maintained a very high market share for over 10 years--consistently in excess of 60 percent.

14. Defendant BFII has market power in small containerized hauling service in the Dubuque market. BFII entered the market in 1979. It maintains a very high market share--in excess of 60 percent.

15. Substantial barriers to entry and to expansion exist in the Memphis and in the Dubuque markets. A new entrant or small incumbent cannot compete effectively until it obtains (1) minimum efficient scale; (2) enough customers efficiently to use its trucks; and (3) route density sufficient to operate profitably in the relevant geographic markets. Until those barriers are overcome, the new entrant or small incumbent will have higher operating costs than Defendants in the relevant geographic markets, may not operate at a profit, and will be unable effectively to constrain price increases by Defendants in those markets.

16. Defendant BFIT in the Memphis market and Defendant BFII in the Dubuque market have entered into written contracts with the vast majority of their existing small container customers in those markets. Many of these contracts contain terms that, when taken together in the relevant markets where Defendants have market power, make it more difficult and costly for customers to switch to a competitor of Defendants and allow Defendants to bid to retain customers approached by a competitor. These contracts

enhance and maintain Defendants' market power in the relevant markets by significantly raising the cost and time required by a new entrant or small incumbent firm to build its customer base and obtain efficient scale and route density. Therefore, Defendants' use and enforcement of these contracts in the Memphis and Dubuque markets raise entry barriers in those markets. Those contract terms are:

- a. provisions giving Defendants the right or opportunity to collect and dispose of all the customers' solid waste and recyclables;
- b. an initial term of three years;
- c. a renewal term of three years that automatically renews unless the customer sends Defendants a written notice of cancellation by certified mail more than 60 days from the end of the initial or renewal term; and
- d. a term that requires a customer that terminates the contract at any other time to pay Defendants, as liquidated damages, its most recent monthly charge times six (if the remaining term is six or more months) or its most recent monthly charge times the number of months remaining under the contract (if the remaining term is less than six months).

17. The appearance and format of the contracts enhances Defendants' ability to use the contracts to maintain their market power in the Memphis and Dubuque markets because the provisions that make it difficult for a customer to switch to a competing hauler are not obvious to the customer.

VI.

VIOLATION ALLEGED

18. Defendants have attempted to monopolize the aforesaid trade and commerce in small containerized solid waste hauling service in the Memphis and Dubuque relevant geographic markets, respectively, in violation of Section 2 of the Sherman Act.

19. Pursuant to and in effectuation of the aforesaid attempts to monopolize, Defendants, acting with specific intent, used and enforced contracts containing restrictive provisions to exclude and constrain competition and to maintain and enhance their market power in small containerized solid waste hauling service in the Memphis and Dubuque markets.

20. The aforesaid violations have had, among other things, the following effects: In the context of Defendants' large market shares and market power, Defendants' use and enforcement of long-term customer contracts in the relevant markets has had anticompetitive and exclusionary effects. The contracts enabled Defendants significantly to increase the barriers to entry facing new entrants and barriers to expansion facing small incumbents into small containerized solid waste hauling service in the Memphis and Dubuque markets. These contract terms make it difficult for entrants and small incumbents to achieve efficient scale, a sufficient customer base, and the route density necessary effectively to constrain Defendants' pricing in those relevant markets. Defendants' market power in the Memphis and Dubuque markets is maintained and enhanced by their use and enforcement of these contracts. As a result, there is a

dangerous probability that Defendants will achieve monopoly power in the relevant markets.

21. The violations alleged in this complaint are continuing and will continue unless the relief hereinafter prayed for is granted.

VII.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays,

1. That the Court adjudge and decree that BFI and BFII have attempted to monopolize the interstate trade and commerce in the market for small containerized solid waste hauling service in the Dubuque market in violation of Section 2 of the Sherman Act.

2. That the Court adjudge and decree that BFI and BFIT have attempted to monopolize the interstate trade and commerce in the market for small containerized solid waste hauling service in the Memphis market in violation of Section 2 of the Sherman Act.

3. That Defendants and all persons, firms and corporations acting on their behalf and under their direction or control be permanently enjoined from engaging in, carrying out, renewing or attempting to engage, carry out or renew, any contracts, agreements, practices, or understandings in violation of the Sherman Act.

4. That Plaintiff have such other relief that the Court may consider necessary or appropriate to restore competitive conditions in the markets affected by Defendants' unlawful conduct.

5. That the Plaintiff recover the costs of this action.

Dated:

_____[s]_____
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